IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5042 OF 2004
WITH
CRIMINAL APPLICATION NO.5043 OF 2004

Mr.Balkrishna Shetty
and Anr. ..Applicants

Vs.

Mr.Shankarrao Sudhamrao
& Anrs. ..Respondents

...
Mr.Anil Kumar Patil Advocate for Applicants
Mr.S.P.Kadam for Respondent no.1
Mr.Y.S.Shinde A.P.P. for the State
Respondent no.2 absent though served
...

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : SEPT. 1,2005

P.C.

1. Heard the learned advocate for the applicants, learned advocate for respondent no.1 and the learned A.P.P. for the State.

2. The applicants are seeking quashing of proceedings relating to Case Nos.2452/S/1999 and 196/S/2000 pending before the Metropolitan Magistrate, 28th Court, Esplanade, Mumbai. In the

said case, process has been issued against the applicants under Section 138 r.w. 141 of Negotiable Instruments Act. The learned advocate for the applicants submitted that the learned Magistrate committed an error in issuing process and the said process deserves to be set aside. It is further submitted that if the process issued against the applicants is set aside, the proceedings in respect of the applicants, would come to an end. The applicants had preferred applications before the learned Magistrate for recall of process. The said applications came to be rejected. Being aggrieved by the said order, revisions came to be preferred before the Sessions Court. The said revisions came to be withdrawn. In view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal and Ors.; [(2004) 7 SCC 338]**, it is clear that the Magistrate does not have power to recall the process. In this view of the matter I am not inclined to interfere with the order of the learned Magistrate rejecting the applications for recall of process.

3. However, for the reasons recorded in my order

dated 13th June, 2005 in W.P.No. 213 of 2005 and dated 21st June, 2005 in Cri.Application No.550 of 2005, I am of the opinion that the applicants have an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the applicants prefer a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the applicants to prefer the necessary revision before the concerned Sessions Court. The learned advocate for the applicants makes a statement that the necessary revision will be preferred within four weeks from today. I am informed that the matter before the trial Court is on 15.9.2005. In this view of the matter, the trial Court shall not proceed with the trial on 15.9.2005 and two weeks thereafter.

. The learned advocate for the respondent no.1-complainant fairly states that no objection will be raised in respect of delay in filing the revision.

5. On the necessary revision being preferred by the applicants before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties.

6. Criminal Applications are disposed of.

[V.K.TAHILRAMANI,J.]